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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,960	11/28/2003	Robin B. Michnick	5348	8998

7590 03/21/2005

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EXAMINER	
WEINSTEIN, STEVEN L	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/722,960	MICHNICK, ROBIN B.	
	Examiner	Art Unit	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-11 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-9,and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasile et al (US 2002/0166463) in view of Martin-Glinel (FR. 2,668,121), Kuttel (DE 2642621), Beliveau (Fr, 2,791,871), Ferhadian (FR 2,694,271) and Shiozaki et al (Jp 9-220068).

In regard to claim 1, Rasile et al discloses a mixed salad container (see e.g. fig. 6) comprising a plastic bag, a first sealed compartment (#120) containing salad (page 2, para. 8), a second compartment (#130) containing dressing, first means for dispensing the dressing from the second compartment into the first compartment (i.e. the rupturable seal, # 110) and second means for opening the first compartment (e.g. the zipper type seal, # 24). Claim 1 recites that the salad dressing is in a 'lesser amount" (presumably relative to the amount of salad –although this is not clear in the claim). Also by 'amount", it is not clear whether one is referring to weight or volume. Rasile et al appears to be silent in this regard. In any case, the relative 'amounts" of dressing vs. salad is seen to have been an obvious matter of choice and an obvious function of economics, health and personal preference. Although many people choose to minimize the use of dressing, especially when it is not low calorie, there are still people who prefer drowning their salad in dressing. However, at least from a merchandising standpoint, economics would dictate the use of less dressing. Note, too, the art taken as whole including Martin-Glinel. Kuttel, Beliveau, Ferhadian and Shiozaki et al, all show compartmented packages containing salad dressing that are maintained separately wherein the dressing is in a compartment that at least in

terms of volume is much less than the salad compartment. Finally, in regard to claim 1, claim 1 further recites that the first means for dispensing is capable of dispensing the dressing while the first compartment remains sealed. Since Rasile et al, like applicants, employs a rupturable seal as the first means for dispensing, then the bag of Rasile et al inherently is capable of dispensing while the first compartment remains sealed (e.g. by pulling apart the walls or applying pressure to the dressing containing compartment. Martin-Glinel, who also teaches a seam (#20) with reduced resistance, teaches, like applicants, that the seam can rupture and allow mixing of salad and dressing while the package remains sealed. Similarly for Kuttel and the burstable member #3. In regard to claims 3-6, as discussed above, the particular amounts of salad and dressing and their relative amounts are seen to have been an obvious matter of choice and a result effective variable. If the intent in reciting amounts of salad and dressing is to convey a "personal" amount, this, too, is seen to have been an obvious matter of choice and an obvious merchandising issue. So-called "individual" sized portions of packaged food is, of course, notoriously conventional. Note that Rasile et al teaches the obviousness that various sizes of bags can be used and even teaches that the amount of food could be "for individuals" (page 3, col. 2, para.7). In regard to claims 7 and 8, whether the salad dressing is dispensed upwardly or downwardly is seen to have been an obvious matter of choice and an obvious function of the orientation of the two compartments relative to each other. That is, one could hold the bag so that the liquid containing compartment is higher or lower and the liquid flows down due to gravity or forced up due to pressure. See e.g. the bags of Rasile et al, Martin-Glinel and Kuttel, all of whom could be held in either orientation. In regard to claim 9, as noted above, Rasile et al discloses a second means that includes interlocking coupling between the sides of the plastic bag.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 9 above, and further in view of Branson (4,892,512) and Riese (4,637,061) both of whom teach that it was well established to employ interlocking coupling as a means for dispensing material from one compartment to another in a bag. To modify the combination and substitute one conventional means for dispensing for another conventional means for its art recognized and applicants' intended function is seen to have been obvious.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Galomb (6,254,907).

Claim 2 recites that the bag is made of PET which is a notoriously well known polyester conventionally used as a plastic film for bags. Galomb discloses a bag comprising polyester. To modify the combination and employ a conventional material for its art recognized and applicants intended function is seen to have been obvious.

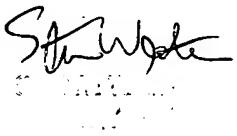
The remainder of the references cited on the USPTO 892 forms are cited as art of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 6:30am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
March 15, 2005



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